

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

IN RE: MICHAEL E. MCDUFFIE	§ BANKRUPTCY CASE NOS. 04-53411 NPO
	§ and 01-51611 NPO
	§ ADVERSARY PROC. NOS. 05-5133 NPO
	§ and 05-5183 NPO

MICHAEL E. MCDUFFIE	§	APPELLANT
	§	
v.	§	CAUSE NO. 1:07CV1024 LG-JMR
	§	
COUNTRYWIDE HOME LOANS, INC.	§	APPELLEE

ORDER GRANTING MOTION TO DISMISS APPEAL

THIS CAUSE COMES BEFORE THE COURT for consideration of Appellant Countrywide Home Loans, Inc.'s Motion to Dismiss Appeal [3], filed October 1, 2007. Appellee McDuffie has not filed a response to Countrywide's assertion that this appeal should be dismissed because McDuffie has failed to file an appeal brief within the time allowed. As of this date, McDuffie has not filed an appeal brief. The Court finds that McDuffie's appeal should be dismissed for failure to comply with FED. R. BANK. P. 8009(a)(1).

Rule 8009(a)(1) of the Bankruptcy Rules requires the appellant in a bankruptcy appeal to file a brief with the district court "within 15 days after entry of the appeal on the docket pursuant to Rule 8007," unless the district court alters this requirement by local rule. There is no local rule altering the requirement in this District. *See In re Salter*, 251 B.R. 689, 691 (S.D. Miss. 2000).

Rule 8001(a) of the Federal Rules of Bankruptcy Procedure allows the district court to dismiss an appeal if the appellant fails to take any step required under the rules for proper prosecution of an appeal. The United States Court of Appeals for the Fifth Circuit has affirmed

dismissals of bankruptcy appeals when the appellant failed to file a brief within the required time. *Id.* (citing *International Brotherhood of Teamsters v. Braniff Airways, Inc.*, 774 F.2d 1303 (5th Cir. 1985) and *Pyramid Mobile Homes, Inc. v. Speake*, 531 F.2d 743 (5th Cir. 1976)).

Because Appellant has failed to file a brief within the time allowed by the Bankruptcy Rules, he has failed to prosecute this appeal. The Appellee's Motion to Dismiss Appeal will therefore be granted.

IT IS THEREFORE ORDERED AND ADJUDGED that the Appellant Countrywide Home Loans, Inc.'s Motion to Dismiss Appeal [3] is **GRANTED**. The appeal of Michael E. McDuffie is **DISMISSED**.

SO ORDERED AND ADJUDGED this the 30th day of October, 2007.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE